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7

8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

10

11 DEREK MATTHEWS
12 Plaintiff,
13 vs.
14 DEMITA PINCHBACK, et al.,
15 Defendants.

16 } Case No.: 2:22-cv-1329 DJC KJN P
17 }
18 } **STIPULATION AND ORDER
19 } ON *EX PARTE* MOTION FOR EARLY
20 } SUMMARY JUDGMENT MOTION
21 } (ECF 30)
22 }**

23 } Judge: Hon. Kendall J. Newman
24 } Courtroom: 25, 8th Floor
25 }

26 WHEREAS on December 9, 2022, Plaintiff's prior counsel filed a motion to withdraw as
27 Plaintiff's counsel, based on a medical condition that required her withdrawal (ECF 21);

28 WHEREAS on December 27, 2022, Defendants Price, Tout, and Sysombath (collectively
referred to as "CDCR Defendants" filed an *ex parte* motion for leave to file an early summary
judgment motion on the issues of failure to exhaust administrative remedies and statute of
limitations (ECF 30);

WHEREAS Plaintiff's prior counsel filed an opposition brief to *ex parte* motion on
December 29, 2022 (ECF 36);

1 WHEREAS the CDCR Defendants filed a reply brief to their *ex parte* motion on
2 December 30, 2022 (ECF 37);

3 WHEREAS by this Court's order, dated April 6, 2023, this case was reassigned to the
4 Honorable Daniel J. Calabretta. (ECF 45.) The order stated that all pending motions were
5 deemed submitted without appearance and without oral argument;

6 WHEREAS on April 26, 2023, Plaintiff's present counsel was appointed as limited
7 purpose counsel (ECF 46);

8 WHEREAS Plaintiff's counsel has reviewed the prior briefing on the pending *ex parte*
9 motion and believes that this motion can be resolved by way of stipulation;

10 WHEREAS the parties seek to resolve the pending *ex parte* motion without the need for
11 further court intervention;

12 IT IS HEREBY STIPULATED AND AGREED by the parties as follows:

- 13 1. Within fourteen (14) days of the date of this Court's Order on the pending motion to
14 dismiss by Defendant Pinchback (ECF 20), the CDCR Defendants may file and serve
15 a motion for summary judgment exclusively on the issues of whether Plaintiff
16 exhausted his administrative remedies prior to filing this action as required by the
17 Prison Litigation Reform Act, 42 U.S.C. § 1997e(a) and whether this action is barred
18 by the applicable statute of limitations;
- 19 2. Within thirty (30) days of any summary judgment filed by the CDCR Defendants, as
20 described in ¶ 1 above, Plaintiff may file an opposition to the summary judgment
21 and/or a motion for summary judgment by Plaintiff on the same issues identified in ¶
22 1 above;
- 23 3. After the CDCR Defendants file their summary judgment motion as described in ¶ 1
24 above, the parties will meet and confer on whether an affirmative summary judgment
25 motion by Plaintiff on the same issues is necessary;
- 26 4. The CDCR Defendants may file a reply brief on their motion for summary judgment
27 within fourteen (14) days after Plaintiff's opposition is filed;

5. Briefing on any summary judgment motion filed by Plaintiff shall comply with Local Rule 230; and
6. Any motions for summary judgment filed pursuant to this Stipulation shall not preclude any party from filing a subsequent motion for summary judgment on the merits of Plaintiff's claims should the case proceed after a decision on the exhaustion and statute of limitations issues; and
7. All discovery in this matter, other than discovery directly related to the issues of exhaustion and statute of limitations, shall be stayed until a decision is issued on the motion(s) for summary judgment for failure to exhaust administrative remedies and based upon the statute of limitations.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD:

Dated: May 15, 2023
Oakland, California

JUSTICE FIRST

/s/ Jenny Huang (as authorized on May 18, 2023)
Jenny C. Huang
Attorney for Plaintiff Derek Matthews

Dated: May 18, 2023
Los Angeles, California

ATTORNEY GENERAL OF CALIFORNIA

Audra C. Call
Audra C. Call
Deputy Attorney General
Attorney for Defendants Price, Tout and Sysombath

IT IS SO ORDERED. (ECF No. 30.)

Dated: May 24, 2023

Kendall J. Newman
KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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